

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IGNACIO ESTEBAN RIMER,
Petitioner/Appellant,

v.

DAVID SHINN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS,
Respondent/Appellee.

No. 2 CA-HC 2019-0005
Filed August 5, 2020

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
No. CR20073959001
The Honorable Wayne E. Yehling, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Ignacio E. Rimer, Florence
In Propria Persona

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Respondent/Appellee

STATE v. RIMER
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Eppich authored the decision of the Court, in which Judge Espinosa and Judge Eckerstrom concurred.

E P P I C H, Presiding Judge:

¶1 Ignacio Rimer seeks review of the trial court’s order summarily dismissing his petition for writ of habeas corpus, which the court seemingly treated as a petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P.¹ We will not disturb that order unless the court abused its discretion. *See State v. Gutierrez*, 229 Ariz. 573, ¶ 19 (2012). Rimer has not met his burden of establishing such abuse here.

¶2 After a jury trial in 2009, Rimer was convicted of illegally conducting an enterprise, kidnapping, sexual assault, and aggravated assault. The trial court sentenced him to a combination of concurrent and consecutive prison terms totaling 23.75 years. This court affirmed Rimer’s convictions and sentences on appeal. *State v. Rimer*, No. 2 CA-CR 2009-0100 (Ariz. App. Jan. 7, 2011) (mem. decision). Rimer has twice sought and been denied post-conviction relief. *State v. Rimer*, No. 2 CA-CR 2012-0437-PR (Ariz. App. Feb. 20, 2013) (mem. decision); *State v. Rimer*, No. 2 CA-CR 2011-0379-PR (Ariz. App. Mar. 12, 2012) (mem. decision).

¶3 In March 2019, Rimer filed a “Petition for State Writ of Habeas Corpus under Arizona Constitution Art. 2, § 14 and Pursuant to A.R.S. § [13-]4121.” Rimer requested that the trial court “quash and render void all proceedings” and “order [his] immediate release” from prison. He raised three grounds for relief: (1) he “was charged with violating an

¹ Our supreme court amended the post-conviction relief rules, effective January 1, 2020. Ariz. Sup. Ct. Order R-19-0012 (Aug. 29, 2019). “Because it is neither infeasible nor works an injustice here, we cite to and apply the current version of the rules.” *State v. Mendoza*, No. 2 CA-CR 2019-0281-PR, n.1, 2020 WL 3055826 (Ariz. Ct. App. June 9, 2020) (“amendments apply to all cases pending on the effective date unless a court determines that ‘applying the rule or amendment would be infeasible or work an injustice’” (quoting Ariz. Sup. Ct. Order R-19-0012)).

STATE v. RIMER
Decision of the Court

invalid law” because “A.R.S. §§ 13-604 or 13-702 in its entirety was recognized as being unconstitutional in an unreported Arizona case”; (2) he “was tried in court pursuant to a ‘fatally defective’ indictment” because the indictment was based on “an unconstitutional state statute,” §§ 13-604 or 13-702; and (3) he was “charged, tried, convicted and sentenced by a court which had no subject matter jurisdiction” because “§§ 13-604 or 13-702 under which the court proceeded to act is unconstitutional.”

¶4 The trial court denied the petition. It explained that all of Rimer’s claims were “based on the contention that . . . §§ 13-604 and 13-702 are unconstitutional,” and, “[o]ther than a reference to ‘an unreported Arizona case,’” which Rimer “did not cite, [he] provided no other legal authority for his assertion.” The court thus concluded that “summary dismissal” was appropriate. This petition for review followed.²

¶5 On review, Rimer asserts, and the state agrees, that the trial court treated his petition as one for post-conviction relief under Rule 32. He argues the court erred by doing so and by finding his claims precluded under Rule 32.2. He maintains that his petition was not filed under Rule 32 but, instead, as the caption indicated, under article II, § 14 of the Arizona Constitution and § 13-4121.³ But regardless of what authority Rimer cited, Rule 32.3(b) provides: “If a court receives any type of application or request for relief – however titled – that challenges the validity of the defendant’s conviction or sentence following a trial, it must treat the application as a petition for post-conviction relief.” See also A.R.S. § 13-4233 (if defendant applies for writ of habeas corpus attacking validity of conviction or sentence, court shall treat it as petition for post-conviction relief).

¶6 In his petition, Rimer argued that he had been “charged, tried, convicted and sentenced” under an “unconstitutional” or “invalid” statute, §§ 13-604 or 13-702, and that he was entitled to “immediate release.” He was thus “challeng[ing] the validity” of his conviction and sentence. Ariz. R. Crim. P. 32.3(b); see *Floyd v. Superior Court*, 134 Ariz. 472, 473-74 (App.

²Rimer filed both a notice of appeal from and a petition for review of the trial court’s order dismissing his petition. However, Rimer agrees with the state that the trial court treated his petition as a petition for post-conviction relief. See Ariz. R. Crim. P. 32.16(a)(1) (defendant may petition for review of trial court’s final decision under Rule 32).

³Rimer also argues that his petition below was filed under A.R.S. § 13-4132, but that statute was not cited therein.

STATE v. RIMER
Decision of the Court

1982) (Rule 32 covers situations that permit collateral attack on conviction or sentence). Accordingly, the trial court did not err in treating Rimer's petition as a petition for post-conviction relief. *See* § 13-4233 (court required to evaluate petition challenging validity of conviction or sentence under Rule 32); Ariz. R. Crim. P. 32.3(b) (same).

¶7 As he did below, Rimer also contends that "Arizona courts have deemed or held that . . . §§ 13-604 and 13-702, in [their] entirety or in part, [are] unconstitutional."⁴ He reasons that, because those statutes were the basis of his indictment, it was "fatally defective and insufficient" and the trial court lacked subject matter jurisdiction to try and sentence him.

¶8 Rule 32.1(a) affords relief if "the defendant's conviction was obtained, or the sentence was imposed, in violation of the United States or Arizona constitutions." A Rule 32.1(a) claim, however, must be filed "within 90 days after the oral pronouncement of sentence or within 30 days after the issuance of the mandate in the direct appeal, whichever is later." Ariz. R. Crim. P. 32.4(b)(3)(A). Rule 32.4(b)(3)(D) requires the trial court to excuse an untimely Rule 32.1(a) claim "if the defendant adequately explains why the failure to timely file a notice was not the defendant's fault." And a defendant is generally precluded from relief under Rule 32.1(a) based on any ground "waived at trial or on appeal, or in any previous post-conviction proceeding." Ariz. R. Crim. P. 32.2(a)(3).

¶9 Rimer's argument is that his conviction was obtained and his sentence was imposed in violation of the United States or Arizona Constitution pursuant to Rule 32.1(a). Because his claim was not filed within thirty days after the mandate in his direct appeal, it was untimely. *See* Ariz. R. Crim. P. 32.4(b)(3)(A). Although Rimer argued below that he had "only just now discovered that he was indicted, tried, convicted and sentenced under an unconstitutional statute," he relied on "an unreported Arizona case," without citing it, as the trial court noted in its order.⁵ With

⁴In support of his argument, Rimer directs us to "*State v. Head*, a not reported . . . Arizona case," which was apparently decided in 2008. But he fails to offer any further identification and he failed to cite it below.

⁵For this same reason, even assuming Rimer's claim could be construed as failing under Rule 32.1(b) – that the trial court "did not have subject matter jurisdiction to render a judgment or to impose a sentence" – we would find no abuse of discretion in the court's summary dismissal of it. *See* Ariz. R. Crim. P. 32.2(b) (for claim under Rule 32.1(b) raised in successive or untimely petition, defendant must explain reasons for not

STATE v. RIMER
Decision of the Court

such limited information explaining the timeliness of Rimer's claim, the court did not abuse its discretion in summarily dismissing his successive petition. *See* Ariz. R. Crim. P. 32.2(a)(3), 32.4(b)(3)(A); *see also* *Canion v. Cole*, 210 Ariz. 598, ¶ 11 (2005) (compliance with Rule 32 not mere formality; parties must strictly comply).

¶10 Rimer also argues that his sentences are illegal because they violate the principles announced in *Blakely v. Washington*, 542 U.S. 296 (2004), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000). However, because he did not raise this issue below, we do not consider it on review. *See* Ariz. R. Crim. P. 32.16(c)(2)(B) (appellate court reviews issues presented to trial court); *State v. Ramirez*, 126 Ariz. 464, 468 (App. 1980) (appellate court will not address arguments asserted for first time in petition for review).

¶11 Accordingly, we grant review but deny relief.

raising claim in previous notice or petition, or for not raising claim in timely manner; if defendant fails to provide "sufficient reasons," trial court may summarily dismiss claim).